

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK

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JOSEPHINE DRAKEFORD, : CV-07-3488 (LBS)

Plaintiff, :
-against- : **STATEMENT OF THE FACTS**
PURSUANT TO RULE 56.1
CENTER ONE FINANCIAL SERVICES, :

Defendants. :
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The defendant, Center One Financial Services, LLC (sued herein as Center One Financial Services) by its attorneys Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, submits the following statement of undisputed facts pursuant to Local Civil Rule 56.1 of the United States District Court for the Southern and Eastern Districts of New York in support of its motion to dismiss the plaintiff's complaint for failure to state a cause of action:

1. The plaintiff, who is proceeding *pro se* in this matter, commenced this action seeking to recover damages for claims arising out of a transaction to purchase an automobile, by filing of a complaint on or about March 6, 2007.
2. In her complaint, the plaintiff alleges that the defendant made unspecified false statements to a credit reporting agency; that the defendant is liable to the plaintiff in strict tort; that the defendant violated the plaintiff's Fourth Amendment rights; that the defendant conspired with Five Towns Mitsubishi to engage in unlawful business practices and that these actions damaged the plaintiff's credit rating.
3. Plaintiff further alleges in her complaint that she had written to the defendant explaining what had transpired with the car transaction and that her efforts to resolve the conflict failed. In support of this statement, the plaintiff attaches one letter from the Better Business Bureau to the plaintiff confirming receipt of a complaint. Plaintiff also attaches a second letter purportedly written by the plaintiff and addressed to the New York State Attorney General. No letters to the defendant were attached to the plaintiff's complaint.
4. In her letter to the Attorney General, dated January 10, 2006, the plaintiff indicated that her son had received a flyer in the mail which stated "you've won a car for \$24,000." The letter goes on to indicate that the plaintiff's son was allowed to "to drive out with the SUV without a down payment..." According to the plaintiff's letter, her son apparently totaled the automobile in question and the vehicle was taken to Potamkin Mitsubishi at

706 11th Avenue and West 50th Street, New York, New York and that her son was told that the vehicle would be treated as a rental.

5. The copy of the aforementioned flyer is attached to the plaintiff's complaint. The flyer clearly states "you could win one of these great prizes \$20,000 in cash or a free vehicle." Moreover, this flyer was apparently issued by Five Towns Mitsubishi of 550 Burnside Avenue, Inwood, New York 11096 and was not issued by Center One Financial Services, LLC, the defendant herein.
6. Also attached to the plaintiff's complaint is what appears to be a partial bill of sale from Five Towns Mitsubishi. The partial bill of sale is clearly signed by Josephine Drakeford under language "customer agrees to above purchase and any applied fees". The partial bill of sale is for a 2006 Mitsubishi Outlander with vehicle identification number JA4LZ31F56U003656
7. In her letter to the New York State Attorney General, the plaintiff admits that she "wrote the company that I could not make payment and did not want the car."
8. The documents submitted by the plaintiff with her complaint do not indicate a rental agreement, but instead show an agreement for the sale of the subject automobile.
9. In fact, the plaintiff agreed to purchase the subject automobile. The defendant has submitted a copy of the contract signed by the plaintiff as Exhibit "B". The contract is for the purchase of a Model Year 2006, Mitsubishi Outlander automobile with vehicle identification number JA4LZ31F56U003656. This is a standard retail installment contract. The contract is signed by Josephine Drakeford and is dated November 9, 2005.
10. The retail installment contract was sold and assigned to Mitsubishi Motors Credit of America ("MMCA"). Defendants have submitted a copy of the Notice of Recorded Lien for the vehicle in question as Exhibit "C". Reviewing the Notice it is clear that MMCA is the lienholder and that Mrs. Drakeford was the owner of the vehicle.
11. The defendant has also submitted a sworn affidavit signed by Lawrence Stegall as Exhibit "D". Pursuant to Mr. Stegall's affidavit, Center One Financial Services, LLC (hereinafter "Center One") is a Delaware limited liability company and a wholly-owned subsidiary of World Omni Financial Corp., a Florida Corporation, which, in turn, is wholly owned by JM Family Enterprises, Inc. (a Delaware corporation). Center One never issued the flyer attached to the plaintiff's complaint. Nor does Center One have any information or knowledge of the flyer.
12. According to Mr. Stegall's affidavit, MMCA purchased and was assigned the retail installment contract by which Mrs. Drakeford financed of the subject automobile.

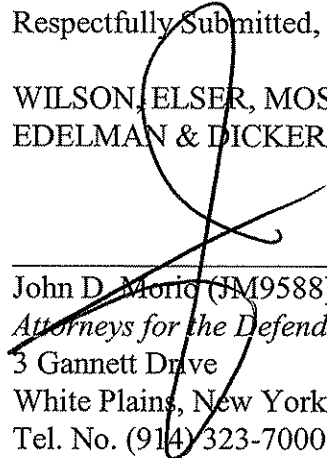
MMCA then sold and assigned the contract to Merrill Lynch Bank USA and Merrill Lynch Bank USA assigned the retail installment contract to, among others, Center One for account servicing. When the servicing of the contract was assigned to Center One, the contract was not in default. When Mrs. Drakeford defaulted on her financial obligation, Center One caused the vehicle to be repossessed, sold it and attempted to recover the balance due from Josephine Drakeford. As the servicer of the contract, Center One is not a debt collector as defined by the Fair Debt Collection Practices Act.

13. In sum, Mrs. Drakeford purchased an automobile and contractually promised to make payments for the automobile pursuant to the terms of the retail installment sales contract. Mrs. Drakeford defaulted on her contractual obligation. The servicer of the account then caused the automobile to be repossessed, had it sold and sought the balance due from the purchaser.

Dated: White Plains, New York
August 6, 2007

Respectfully Submitted,

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER, LLP.



John D. Morio (JM9588)
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File No. 04575.00056

To: JOSEPHINE DRAKEFORD
Plaintiff Pro Se
55 E. 99th Street, #8D
New York, New York 10029
Tel No.: (646) 672-1995

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SOUTHERN DISTRICT OF NEW YORK

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JOSEPHINE DRAKEFORD, : CV-07-3488 (LBS)

Plaintiff, :

-against- :

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ATTORNEY'S AFFIRMATION
OF SERVICE PURSUANT TO
CPLR § 2106

JOSEPH A. H. MCGOVERN, ESQ., an attorney duly admitted to practice law before all the Courts of the State of New York, and an associate of the law firm of WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP, pursuant to Rule 2106 of the Civil Practice Law & Rules herein makes the following statements, under penalties of perjury:

1. That your affirmant is not a party to the above referenced action, is over the age of eighteen years, and is a resident of Westchester County, New York State.

2. That on the 6th day of August 2007, your affirmant did serve the within ***Statement of the Facts Pursuant to Rule 56.1*** upon:

JOSEPHINE DRAKEFORD
55 E. 99th Street, #8D
New York, New York 10029

the plaintiff pro se in this action, ***via first class mail*** at the above address designated by the plaintiff for that purpose by enclosing said papers in a secured, properly addressed envelope with sufficient postage attached thereto, and depositing same in a secure depository under the exclusive care and custody of the United States Postal Service located within the State of New York.

Dated: New York, New York
August 6, 2007


JOSEPH A. H. MCGOVERN, ESQ.

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John D. Morio
04575.00056

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PURSUANT TO RULE 56.1**

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

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Dated: August 6, 2007